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11 Attorneys for the United States

12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE EASTERN DISTRICT OF WASHINGTON

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 LAITH ELAIMY

19 Defendant.

Case No. 20-119

**COMPLAINT**

20 The United States of America complains and alleges as follows:

1 1. This is a civil action brought by the United States of America to  
2 reduce to judgment the outstanding federal tax liabilities and civil  
3 penalties assessed against Laith Elaimy.

4 **JURISDICTION AND VENUE**

5 2. This action is brought at the direction of the Attorney General of  
6 the United States and at the request and with the authorization of the  
7 Chief Counsel of the Internal Revenue Service (“IRS”), a delegate of the  
8 Secretary of the Treasury, pursuant to 26 U.S.C. § 7401.

9 3. The Court has jurisdiction over this action pursuant to 26 U.S.C. §  
10 7402 and 28 U.S.C. §§ 1340 and 1345.

11 4. Venue is proper in the Eastern District of Washington under 28  
12 U.S.C. §§ 1391(b)(1) & (2) because the behavior giving rise to the tax  
13 liabilities occurred in this judicial district. Moreover, upon information  
14 and belief, Laith Elaimy lives in the Eastern District of Washington.

**DEFENDANTS**

5. The United States realleges paragraphs 1 through 4 and reincorporates them herein.

6. Laith Elaimy currently lives in the Eastern District of Washington. He is made a party to this suit because he has unpaid federal tax liabilities.

**TAX LIABILITIES AT ISSUE**

7. The United States reasserts the allegations made in paragraphs 1 through 6, above, as full set forth herein.

8. On the dates set forth below, a duly authorized delegate of the Secretary of the Treasury made assessments against Laith Elaimy (via the sole proprietorship Smokin'), individually, as follows:

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<u>Type of Tax</u>	<u>Tax Periods</u>	<u>Assessment Date</u>	<u>Assessment Amount</u> <sup>1</sup>		<u>Estimated Unpaid Balance as of March 31, 2020</u> <sup>2</sup>
941	Q4 2009	03-29-2010	T	\$2,659.71	\$4,511.02
		03-29-2010	P5	\$265.97	
		03-29-2010	P2	\$26.60	
		03-29-2010	I	\$16.67	
		05-03-2010	P5	\$132.99	
		08-30-2010	P2	\$106.38	
		09-05-2016	I	\$649.26	
		09-05-2016	P2	\$456.95	
		09-04-2017	I	\$155.10	
941	Q1 2010	06-14-2010	T	\$2,382.55	\$4,452.78
		04-05-2010	P4	\$25.00	
		06-14-2010	P2	\$23.83	
		06-14-2010	I	\$11.90	
		11-22-2010	F	\$170.00	
		09-05-2016	I	\$580.21	
		09-05-2016	P2	\$571.81	
		09-04-2017	I	\$153.09	
941	Q2 2010	10-04-2010	T	\$2,347.26	\$4,117.14
		07-12-2010	P4	\$250.00	
		10-04-2010	P2	\$35.21	
		10-04-2010	I	\$16.96	
		09-05-2016	I	\$505.45	
		09-05-2016	P2	\$551.61	
		09-04-2017	I	\$141.55	
941	Q3 2010	01-03-2011	T	\$2,253.98	\$4,125.16
		01-03-2011	P2	\$33.81	

<sup>1</sup> T—tax assessed; F—fees and collection costs; P1—late return filing penalty, 26 U.S.C. §6651(a)(1); P2—failure to timely pay tax penalty, 26 U.S.C. §6651(a)(2) & (a)(3); P3—Late filing of W-2s, § 6721(e)(2)(A); P4 – Dishonored check penalty; P5 – Federal Tax Deposit Penalty; I—interest assessed, or reduced and removed previous interest credited; F—Fees and collection costs.

<sup>2</sup> Includes accrued balance, including both assessed and unassessed amounts and taking into account credits and payments.

		01-03-2011	I	\$15.68	
		03-14-2011	F	\$170.00	
		09-05-2016	I	\$485.11	
		09-05-2016	P2	\$529.69	
		09-04-2017	I	\$141.83	
941	Q4 2010	10-10-2011	T	\$4,783.26	\$8,977.24
		10-10-2011	P1	\$1,014.10	
		10-10-2011	P2	\$88.18	
		10-10-2011	I	\$141.32	
		09-05-2016	I	\$924.40	
		09-05-2016	P2	\$1,014.10	
		09-04-2017	I	\$308.65	
941	Q3 2011	01-02-2012	T	\$2,281.02	\$2,509.96
		01-02-2012	P2	\$26.38	
		01-02-2012	I	\$8.74	
		09-05-2016	I	\$238.31	
		09-05-2016	P2	\$351.84	
		09-04-2017	I	\$86.29	
941	Q4 2011	04-09-2012	T	\$2,126.64	\$1,444.78
		04-09-2012	P2	\$10.91	
		04-09-2012	I	\$4.12	
		10-12-2015	F	\$194.00	
		09-05-2016	I	\$114.73	
		09-05-2016	P2	\$170.86	
		09-04-2017	I	\$49.67	
941	Q2 2012	04-29-2013	T	\$2,512.99	\$3,594.55
		07-09-2012	P4	\$25.00	
		04-29-2013	P1	\$411.56	
		04-29-2013	P2	\$82.31	
		04-29-2013	I	\$51.14	
		09-05-2016	I	\$265.46	
		09-05-2016	P2	\$374.97	
		09-04-2017	I	\$123.57	
941	Q3 2013	12-30-2013	T	\$2,719.44	\$2,867.47
		09-09-2013	P4	\$25.00	
		11-11-2013	P4	\$25.00	
		12-30-2013	P2	\$17.62	
		12-30-2013	I	\$8.94	

		09-05-2015	I	\$162.74	
		09-05-2016	P2	\$423.00	
		09-04-2017	I	\$98.58	
940	2009	03-29-2010	T	\$470.68	\$252.42
		03-29-2010	P2	\$0.49	
		03-29-2010	I	\$0.31	
		08-30-2010	P2	\$1.98	
		09-05-2016	I	\$12.15	
		09-05-2016	P2	\$9.86	
		09-04-2017	I	\$3.01	
		02-24-2020	F	\$164.00	
940	2010	04-25-2011	T	\$276.80	\$744.74
		06-14-2010	P4	\$25.00	
		03-07-2011	P4	\$25.00	
		04-25-2011	P2	\$3.90	
		04-25-2011	I	\$2.28	
		06-11-2012	F	\$170.00	
		09-05-2016	I	\$82.33	
		09-05-2016	P2	\$61.13	
		09-04-2017	I	\$25.60	
Civil Penalty	2012	11-23-2015	P3	\$5,147.85	\$6,495.96
		03-07-2016	F	\$196.00	
		09-05-2016	I	\$149.18	
		09-04-2017	I	\$223.34	
Civil Penalty	2013	11-14-2016	P3	\$2,488.37	\$2,952.30
		09-4-2017	I	\$81.43	
<b>TOTAL</b>					<b>\$47,045.52</b>

9. On the dates set forth below, a duly authorized delegate of the Secretary of the Treasury made assessments against Laith Elaimy, as responsible officer in charge of Niko's Gourmet, Inc., as set forth below.

<u>Type of Penalty</u>	<u>Tax Periods</u>	<u>Assessment Date</u>	<u>Assessment Amount</u> <sup>3</sup>	<u>Estimated Unpaid</u>
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<sup>3</sup> 6672 – Trust Fund Recovery Penalty, § 6672; F—fees and collection costs; P1—late return filing penalty, 26 U.S.C. §6651(a)(1); P2—failure to timely pay tax penalty,

					<u>Balance as of March 31, 2020<sup>4</sup></u>
6672	Q1 2009	08-02-2010	6672	\$10,188.42	\$429.21
		11-22-2010	F	\$170.00	
		11-16-2015	I	\$1,835.93	
		11-14-2016	I	\$422.80	
		11-13-2017	I	\$485.43	
		02-24-2020	I	\$239.15	
		03-02-2020	F	\$82.00	
6672	Q3 2009	08-02-2010	6672	\$9,532.68	\$336.11
		11-16-2015	I	\$1,742.25	
		11-14-2016	I	\$414.14	
		11-13-2017	I	\$475.52	
		11-25-2019	I	\$256.44	
		02-10-2020	I	\$256.46	
6672	Q4 2009	01-02-2012	6672	\$9,811.95	\$6,586.08
		05-21-2012	F	\$170.00	
		11-16-2015	I	\$1,227.04	
		11-14-2016	I	\$411.74	
		11-13-2017	I	\$472.73	
6672	Q1 2010	01-02-2012	6672	\$5,870.60	\$8,022.21
		11-16-2015	I	\$722.92	
		11-14-2016	I	\$242.20	
		11-13-2017	I	\$278.07	
6672	Q2 2010	01-02-2012	6672	\$8,984.63	\$12,277.56
		11-16-2015	I	\$1,106.41	
		11-14-2016	I	\$370.67	
		11-13-2017	I	\$425.58	
6672	Q3 2010	01-02-2012	6672	\$7,934.42	\$10,842.44
		11-16-2015	I	\$977.09	
		11-14-2016	I	\$327.33	

26 U.S.C. §6651(a)(2) & (a)(3); P3—Late filing of W-2s, § 6721(e)(2)(A); P4 – Dishonored check penalty; P5 – Federal Tax Deposit Penalty; D—dishonored deposit; I—interest assessed, or reduced and removed previous interest credited; F—Fees and collection costs.

<sup>4</sup> Includes accrued balance, including both assessed and unassessed amounts and taking into account credits and payments.

		11-13-2017	I	\$375.84	
6672	Q4 2010	03-19-2012	6672	\$17,015.63	\$11,251.50
		11-16-2015	I	\$1,975.16	
		11-14-2016	I	\$697.58	
		11-13-2017	I	\$800.91	
6672	Q1 2011	01-02-2012	6672	\$4,134.42	\$5,649.72
		11-16-2015	I	\$509.13	
		11-14-2016	I	\$170.57	
		11-13-2017	I	\$195.84	
<b>TOTAL</b>					<b>\$55,394.83</b>

10. During the periods set forth in paragraph 9, above, Laith Elaimy was required to collect, truthfully account for, and pay over employment taxes on behalf of the employees of Niko's Gourmet, Inc.

11. During the periods set forth in paragraph 9, above, Laith Elaimy was President of Niko's Gourmet, and a signatory on Niko's Gourmet's bank account.

12. From the time Niko's Gourmet formed in 1989 until at least the time Laith Elaimy spoke with the IRS about the failure to pay Niko's Gourmet's employment taxes in January 2011, Laith Elaimy was the only person in Niko's Gourmet who:

- a. determined financial policy for the business;
- b. directed or authorized the payment of bills/creditors;
- c. opened or closed bank accounts for the business;



- d. guaranteed or co-signed loans;
- e. signed or counter-signed checks;
- f. authorized payroll;
- g. authorized or made Federal Tax Deposits;
- h. Prepared, reviewed, signed, or transmitted payroll tax returns; or
- i. Hired or fired employees;

13. During the periods set forth in paragraph 9, above, Laith Elaimy willfully failed to collect or truthfully account for Niko's Gourmet's Federal Employment Taxes.

14. During the time the delinquent employment taxes underlying the § 6672 assessments described in paragraph 9 arose, Laith Elaimy authorized the payment of other creditors, on behalf of Niko's Gourmet, rather than pay the outstanding tax liabilities.

15. Laith Elaimy failed to pay in full the above tax liabilities despite notice and demand for payment. Pursuant to 26 U.S.C. § 6321, statutory liens arose against all property and rights to property owned by Laith Elaimy at the time of the tax assessments.

1       16.       Despite timely notice and demand for payment of the  
2 assessments described above, Laith Elaimy has neglected or refused to  
3 make payment to the United States, and there remains due and owing  
4 on those assessments, together with accrued but unassessed statutory  
5 interest and other additions, the total amount of **\$102,440.35**  
6 (\$47,045.52 + \$55,394.83) as of March 31, 2020, plus statutory interest  
7 and accruals after that date.

8               **COUNTY I: REDUCE TO JUDGMENT FEDERAL TAX AND**  
9               **PENALTY ASSESSMENTS AGAINST LAITH ELAIMY**

10       17.       The United States reasserts the allegations made in  
11 paragraphs 1 through 16, above.

12       18.       On the dates, in the amounts, and for the tax periods set  
13 forth in paragraphs 8 and 9, above, a duly authorized delegate of the  
14 Secretary of the Treasury made assessments against Defendant Laith  
15 Elaimy for unpaid Form 941 FICA taxes, Form 940 FUTA taxes, § 6672  
16 trust fund recovery penalties, and § 6721(e)(2) late W-2 filing penalties,  
17 along with other associated penalties and interest.

18       19.       Despite timely notice and demand for payment of the  
19 assessments described above, Laith Elaimy has neglected, refused, or  
20 failed to pay the assessments and there remains due and owing to the

1 United States on those assessments the amount of **\$102,440.35**, as of  
2 March 31, 2020, plus statutory interest and accruals after that date.

3 20. Under 26 U.S.C. § 7402(a), the United States is entitled to a  
4 judgment against Laith Elaimy for the unpaid balance of the assessed  
5 amounts described above, plus statutory interest and any other  
6 additions accruing to the date of payment.

7 WHEREFORE the United States prays as follows:

- 8 a. That judgment be entered against defendant Laith Elaimy for  
9 unpaid taxes, penalties and interest, for Employer's Quarterly  
10 Federal Tax (Form 941) taxes for Smokin' for Q4 2009, Q1 2010,  
11 Q2 2010, Q3 2010, Q4 2010, Q3 2011, Q4 2011, Q2 2012, Q3 2013,  
12 Federal Unemployment Tax Act taxes for Smokin' for 2009 and  
13 2010, civil penalties under 26 U.S.C. § 6721(e)(2)(A) for failure to  
14 file or late filing of W-3s; and Trust Fund Recovery Penalties  
15 under 26 U.S.C. s 6672 for Q1 2009, Q3 2009, Q4 2009, Q1 2010,  
16 Q2 2010, Q3 2010, Q4 2010, and Q1 2011, (in the total amount of  
17 \$102,440.35 as of March 31, 2020, plus statutory interest and  
18 accruals after that date;

b. That the United States be granted such other relief as the court  
deems just and proper, including fees and costs as allowed by law.

Dated this 25th day of March, 2020.

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney  
General

/s/ Dylan Cerling  
DYLAN C. CERLING  
Trial Attorney, Tax Division  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #    AMOUNT    APPLYING IFP    JUDGE    MAG. JUDGE

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

\_\_\_\_\_  
Date

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: